IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3099 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MHU PATEL

Versus

G S R T CORPORATION

Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 01/07/98

ORAL JUDGEMENT

#. Rule. Mr.Y.S.Lakhani, learned advocate for the respondent waives the notice of rule.

#. Mr.M.H.U.Patel, the conductor working with the respondent Gujarat State Road Transport Corporation has filed the present petition to get modification of the award passed by the Industrial Tribunal of Surat in Reference No.128 of 1988 of 30th March,1995.

#. On 12th March,1983, the present petitioner was a

conductor on a bus proceeding from Hajat to Adol. When the said bus was checked by the checking party, it was found that the petitioner had recovered Rs.0.50/- from each of the two passengers and had not issued tickets to them. On account of the said incident, the respondent initiated a departmental inquiry against the present [petitioner. During the said inquiry, one of the two passengers had made application on oath by way of affidavit to the authority, stating therein that there was no fault on the part of the conductor. He stated that he and his wife were travelling in the bus. His wife was ill and though the conductor was asking to have ticket from him, he could not go to him and collect the tickets as he was looking after his ailing wife. This statement of the said passenger was taken into consideration by the inquiry officer as well as the competent authority had also considered the same and the appellant was found guilty of the misconduct and he was punished by awarding the penalty of reducing his basic salary Rs.328/- to Rs.196/- thereby denying increments earned by him for 13 years.

#. The petitioner felt aggrieved by the said decision and raised industrial dispute and the conciliation officer by order dated 30th November,1988 made a reference as to whether the punishment awarded to the delinquent workman was unjust and illegal and whether he was entitled to get the loss suffered by him on account of awarding of said punishment. The said reference was heard by the industrial tribunal of Surat and by its order dated 30th March,1995, it came to the conclusion that the punishment awarded was harsher and deserves to be interfered with. Therefore the industrial tribunal allowed the said reference and set aside the order of punishment awarded by the competent authority and awarded punishment of denial of 4 (four) increments permanently from 1st January,1994.

#. The petitioner has come before this court and grievance made by the petitioner is that no reasons are given by the industrial tribunal for ordering the payment of arrears by allowing non payment of 4 increments instead of 13 increments from 1st January,1994. It is submitted that in the ordinary course, the punishment ought to have related to the original date of the punishment and the order of punishment awarded by the industrial tribunal must relate back to the original date of punishment ordered by competent authority and therefore the industrial tribunal ought not to have given the arrears from the original date of order i.e. from 16th April,1983.

#. On behalf of the Corporation, it is vehemently urged before me by the learned advocate that there are no grounds to interfere with the order passed by the industrial tribunal. He further submitted before me that in view of the decision of thee division bench of this court in case of Gujarat State Road Transport Corporation Vs. P. K. Acharya 1992(2) GLH Pg-354, the industrial court had no jurisdiction to interfere with the order of punishment when the order of punishment is not either the order of dismissal or of removal from service.

#. It is true that under Section-11-A, the industrial tribunal or labour court has got powers to set aside of order of discharge or dismissal and to direct reinstatement of the workman but that does not mean that the industrial tribunal has no jurisdiction to entertain a reference as regards the question of punishment if the punishment is less than the punishment of discharge or dismissal. The jurisdiction of the court to consider the question of punishment will depend on the wording of the reference made to the labour court or industrial court. If the submission made by the learned advocate for the Corporation is to be accepted then the workman has only to challenge the question of punishment and if the punishment is less than that of dismissal or discharge then he would be left with no forum. Even in case cited by the learned advocate for the corporation in Para-19 on page-386, the submission made before me, has been rejected by Justice Chauhan which runs as under :

"19. The submission of Shri Shelat, learned advocate for the management, that the Tribunal has no jurisdiction at all to interfere with the order inquiry in which the punishment other than that of the discharge or dismissal is imposed, cannot be accepted. Shri Shelat submits that provisions of Section 11 A, Industrial Disputes Act only empower the Tribunal to interfere with the order in which the punishment of discharge or dismissal is imposed and in no other order and therefore, the Tribunal cannot interfere with any other order in which the other punishment is imposed. There is no provision under the Act pronibiting the Tribunal in exercising the jurisdiction except in the case if punishment of discharge or dismissal. We have extensively discussed the provisioins of Section 7, 7A and 15, and the Schedule, and it is evident that the Tribunal has jurisdiction even to interfere with the order imposing the punishment other than that

> of discharge or dismissal. Even prior to the incorporation of Section 11A, Industrial Disputes Act, the jurisdiction of the tribunal to interfere with the order of punishment is recognized and accepted by the courts, of course, that is only under certain circumstances as discussed above. The acceptance of the submission would lead to absurd results and even in case of punishment other than that of discharge or dismissal which may lead to victimization, the Tribunal will not be in a position to interfere and give proper justice to the workman."

This decision of 1992(2) GLH-354 is the decision of the division bench consisting of Mr. Justice A.M.Ahemadi, who had subsequently became the Hon'ble Chief Justice of India and Mr.Justice Chauhan. Mr.Justice Ahemadi has also given a separate judgment and in para-3 of his judgment, he has negatived the said contention by making the following observations :

"In other words, cases of punishment other than discharge or dismissal would continue to be governed by the law laid down by the judicial pronouncement prior to the insertion of Section-11 A in the Act." Therefore, the case on which the reliance is placed itself negatives the contention raised on behalf of the Corporation that the Industrial Court had no jurisdiction to interfere with the sentence in question.

#. Having found that the industrial tribunal has jurisdiction to interfere with the sentence, I proceed to consider as to whether the order passed by the industrial tribunal is proper and correct. The industrial tribunal has ordered that arrears should be paid from 1-1-1994 without giving any reason in the whole judgment as to why it has ordered to pay the said arrears from 1-1-94. In the usual course the order of sentence will relate back to the date of the order of punishment given by the competent authority. No doubt it is opened for the industrial tribunal to say for reasons to be stated in the judgement as to from what date the punishment to take effect. Therefore, the mentioning of the date of 1-1-94 in the said letter by the industrial tribunal could not be upheld and accepted.

#. It may be further mentioned here that it is not case that the petitioner was not working and he was not doing any work and inspite of that he is to get the benefit of arrears. The increments which are awarded by

the petitioner are on account of the previous service put in by the petitioner prior to the alleged misconduct and he has to continuously worked even thereafter and even after of awarding of punishment. Therefore, it could not be said that the punishment will be enreaching the petition without doing any work. No doubt, there is some delay on the part of the petitioner in raising the industrial dispute. It seems from the order of the labour commissioner that the industrial dispute was raised on 12-2-88. That the industrial dispute was raised by him after near 5 years from the publication of punishment. Similarly, the present petition is also filed by the petitioner near 3 years after the award of the tribunal. Therefore, taking into consideration these latches on the part of the petitioner, I direct and order that the petitioner will be entitled to get arrears from the date of reference 30th November,1988 instead of 1st January,1994. Thus, I hold that the present petition stands partly allowed. In the order of the industrial tribunal in place of dated 1-1-94, the date of 30-11-88 should be inserted and the rest of the order of the industrial tribunal stands confirmed. The respondent Corporation to pass necessary order to give effect to this modification within 8 weeks from today and to pay arrears within 8 weeks from today. No order as to costs. Rule is made absolute as indicated above.

Dt : 1-7-1998 (S.D.Pandit,J.)

(KPP)